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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

N.Z., R.M., B.L., S.M., and A.L.,
individually and on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

FENIX INTERNATIONAL LIMITED,
FENIX INTERNET LLC, BOSS
BADDIES LLC, MOXY
MANAGEMENT, UNRULY AGENCY
LLC (also d/b/a DYSRPT AGENCY),
BEHAVE AGENCY LLC, A.S.H.
AGENCY, CONTENT X, INC., VERGE
AGENCY, INC., AND ELITE
CREATORS LLC,

Defendants.

Case No. 8:24-cv-01655-FWS-SSC

Judge: Hon. Fred W. Slaughter

**DEFENDANT ELITE
CREATORS INC.'S JOINDER
TO SPECIALLY APPEARING
DEFENDANTS FENIX
INTERNATIONAL
LIMITED'S AND FENIX
INTERNET LLC'S MOTION
FOR PARTIAL
RECONSIDERATION OR
ALTERNATIVELY
CERTIFICATION OF AN
INTERLOCUTORY APPEAL**

Complaint Served: 8/05/2024

1 Defendant Elite Creators LLC (“**Defendant**” or “**Elite Creators**”), by and
2 through counsel and pursuant to Civil Local Rule 7-18, Rule 54(b) of the Federal
3 Rules of Civil Procedure, and 28 U.S.C. § 1292(b), submits this Joinder to the Motion
4 for Partial Reconsideration or Alternatively Certification of an Interlocutory Appeal
5 (the “**Motion to Reconsider**”) (EFC No. 147, filed July 31, 2025) filed by Specially
6 Appearing Defendants Fenix International Limited and Fenix Internet LLC (the
7 “**Fenix Defendants**”). Elite Creators joins in full the arguments and relief sought in
8 the Fenix Defendants’ Motion to Reconsider and incorporates by reference the points
9 and authorities set forth therein, as permitted by applicable law.

10 ARGUMENT

11 Forum selection clauses are presumptively valid and “should be honored
12 ‘absent some compelling and countervailing reason.’” *Waters v. Advent Prod. Dev.,*
13 *Inc.*, No. 07CV2089BTMLSP, 2008 WL 7683231, at *7 (S.D. Cal. June 26, 2008)
14 (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)). “The party
15 challenging the clause bears a ‘heavy burden of proof’ and must ‘clearly show that
16 enforcement would be unreasonable and unjust, or that the clause was invalid for
17 such reasons as fraud or overreaching.’” *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d
18 1133, 1140 (9th Cir. 2004) (quoting *Bremen*, 407 U.S. at 15, 17.)

19 Courts in the Ninth Circuit also recognize that a forum selection clause may,
20 in appropriate circumstances, apply to non-signatory defendants whose conduct is
21 closely related to the contractual relationship. For example, in *Manetti-Farrow, Inc.*
22 *v. Gucci America, Inc.*, the Ninth Circuit affirmed the district court’s conclusion that
23 “the alleged conduct of the non-parties is so closely related to the contractual
24 relationship that the forum selection clause applies to all defendants.” 858 F.2d 509,
25 514 n.5 (9th Cir. 1988).

26 Building on this principle, the Ninth Circuit has held that “where the alleged
27 conduct of the nonparties is closely related to the contractual relationship, ‘a range
28 of transaction participants, parties and non-parties, should benefit from and be

1 subject to forum selection clauses.” Holland Am. Line Inc. v. Wärtsilä N. Am., Inc.,
2 485 F.3d 450, 456 (9th Cir. 2007) (quoting Manetti-Farrow, 858 F.2d at 514 n.5).

3 Federal district courts within the Circuit have applied this doctrine to bind
4 non-signatories who were owners, officers, or closely affiliated with the contracting
5 party. For example, in Comerica Bank v. Whitehall Specialties, Inc., the court held
6 that individual defendants could be bound by a forum selection clause despite not
7 signing the contract, because they were “closely related to the contractual
8 relationship” at issue. 352 F. Supp. 2d 1077, 1082 n.6 (C.D. Cal. 2004). Similarly,
9 in Waters, the court applied a forum selection clause to non-signatory defendants
10 whose alleged conduct was closely intertwined with the contract. 2008 WL 7683231,
11 at *7.

12 **I. The Forum Selection Clause in the OnlyFans Terms of Service is**
13 **Enforceable in Favor of Elite Creators.**

14 Given this well-established precedent, the forum selection clause in OnlyFans’
15 Terms of Service is enforceable in favor of Elite Creators because Plaintiffs’ claims
16 against it are closely related to the contractual relationship governed by those terms.
17 Plaintiffs’ claims against Elite Creators arise directly from their use of the OnlyFans
18 platform and the conduct of content creators on that platform—matters that fall
19 squarely within the scope of the governing Terms of Service.

20 The Terms of Service include the following forum selection clause:

21 If you are a consumer resident outside of the United
22 Kingdom or the European Union, any claim which you
23 have or which we have arising out of or in connection with
24 your agreement with us or your use of OnlyFans
25 (including, in both cases, non-contractual disputes or
26 claims) must be brought in the courts of England and
27 Wales.

28 ECF No. 60-1, Exh. A ¶ 16(a).)

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1 Plaintiffs allege they used OnlyFans to view and purchase content from
2 content creators and that they were misled into doing so based on the purported
3 chatter scams that were allegedly devised, managed, or executed by third-party
4 agencies such as Elite Creators. They claim that Elite Creators and other agency
5 defendants engaged in fraudulent marketing, pricing, and messaging tactics—all of
6 which occurred through the OnlyFans platform and relied on the platform’s features
7 and functions.

8 Plaintiffs do not allege that Elite Creators operated independently of
9 OnlyFans, communicated with Plaintiffs outside the platform, or obtained any direct
10 payments from them. Rather, the theory of liability against Elite Creators is entirely
11 dependent on Plaintiffs’ use of OnlyFans and their contractual relationship with the
12 Fenix Defendants. The factual and legal basis for the claims against Elite Creators
13 is thus inseparable from the conduct governed by the Terms of Service.

14 Elite Creators is entitled to enforce the forum selection clause because the
15 claims against it are so intimately bound up with Plaintiffs’ agreement with the Fenix
16 Defendants that enforcement is not only appropriate but compelled under Ninth
17 Circuit precedent. *See Holland Am. Line*, 485 F.3d at 456 (“[A] non-party may
18 enforce a forum selection clause if the non-party is ‘closely related to the contractual
19 relationship’ between the contracting parties.”).

20 Because Plaintiffs’ claims against Elite Creators are factually and legally
21 dependent on their use of the OnlyFans platform and fall within the forum selection
22 clause’s broad scope, the Court should enforce the forum selection clause in favor
23 of Elite Creators.

24 **II. This Court Has Already Found That the Forum Selection Clause**
25 **Covers Plaintiffs’ Claims.**

26 This Court has already determined that the forum selection clause contained in
27 the OnlyFans Terms of Service governs the claims asserted in this action, including
28 the claims brought against Elite Creators. Specifically, the Court found that “the

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1 broad scope of the forum selection [clause] covers Plaintiffs’ claims.” (*Order*
2 *Granting in Part and Denying in Part Defs.’ Mot. to Dismiss for Forum Non*
3 *Conveniens* at 7, ECF No. 117, filed Apr. 9, 2025.) The Court explained that
4 “Plaintiffs allege that Defendants and Agency Defendants engaged in various
5 fraudulent practices and disseminated confidential and private information without
6 Plaintiffs’ consent with operating the OnlyFans website or creating content.” *Id.*
7 Further, the Court noted that “Plaintiffs’ alleged injuries from this scheme all stem
8 from Plaintiffs’ use of the OnlyFans website, which is governed by the Terms of
9 Service and Privacy Policy[.]” *Id.*

10 This finding is dispositive of whether the forum selection clause is broad
11 enough to encompass the claims now asserted against Elite Creators. In many
12 regards, Plaintiffs’ allegations against Elite Creators mirror those asserted against the
13 Fenix Defendants and the other Agency Defendants, including claims based on
14 alleged misuse of private content and conduct occurring on or in connection with the
15 OnlyFans platform. Because the Court has already held that such claims are within
16 the scope of the clause, there is no reasonable basis to carve out Elite Creators from
17 that ruling.

18 The Court’s prior determination also underscores the integral role of the Terms
19 of Service in governing the relationship between Plaintiffs and the OnlyFans
20 platform. Plaintiffs cannot avoid the effect of the forum selection clause simply by
21 naming additional defendants or labeling their claims as tort-based. *See Manetti-*
22 *Farrow*, 858 F.2d at 514 (“[F]orum selection clauses can be equally applicable to
23 contractual and tort causes of action.”) Where, as here, the alleged injuries arise
24 directly from Plaintiffs’ use of the OnlyFans website and its associated contractual
25 terms, the forum selection clause must be enforced consistent with the Court’s prior
26 ruling.

1 **III. Enforcement Would Promote Judicial Economy and Avoid**
2 **Inconsistent Judgments.**

3 Enforcing the forum selection clause in favor of Elite Creators not only aligns
4 with applicable legal precedent but also serves important interests in judicial
5 efficiency and consistency. Plaintiffs' claims against Elite Creators are premised on
6 the same factual allegations and legal theories as most of their claims against the
7 Fenix Defendants, whose conduct is governed by OnlyFans' Terms of Service.
8 Allowing the claims to proceed against Elite Creators in this forum—while those
9 against the Fenix Defendants are subject to dismissal or transfer under the forum
10 selection clause—would risk inconsistent rulings on the same issues of law and fact
11 and lead to duplicative litigation in multiple jurisdictions.

12 This concern is particularly acute given the Court's prior determination that
13 the forum selection clause in OnlyFans' Terms of Service broadly applies to
14 Plaintiffs' claims. Because those claims stem from Plaintiffs' use of the OnlyFans
15 platform and the conduct of individuals and entities allegedly acting in concert,
16 fragmenting the litigation would undermine the orderly resolution of the dispute and
17 impose unnecessary burdens on both the parties and the judiciary.

18 For these reasons, enforcing the forum selection clause as to Elite Creators
19 would conserve judicial resources, avoid inconsistent judgments, and serve the
20 interests of justice.

21 **CONCLUSION**

22 For the foregoing reasons, and for those set forth in Motion to Reconsider filed
23 by the Fenix Defendants, Defendant Elite Creators respectfully requests that the
24 Court grant the motion in its entirety as to Elite Creators and either reconsider its
25 prior ruling or certify the issue for interlocutory appeal pursuant to 28 U.S.C.
26 § 1292(b).

1 Dated: August 14, 2025

Respectfully submitted,

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3
4 By: /s/ Michael Gehret

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